IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

WILLIAM BARTON DAVIS, and JOHN NEWMERZHYCKY Plaintiff, v. IOWA STATE TROOPER JUSTIN SIMMONS, TROOPER ERIC VANDERWIEL, SPECIAL AGENT JESSIE WHITMER, DESERT SNOW, LLC and JOE DAVID Defendants.	:	CIVIL ACTION No.: 4:14-cv-00385 JURY TRIAL DEMANDED

COMPLAINT

PRELIMINARY STATEMENT

Plaintiffs William Barton Davis and John Newmerzhycky bring this civil rights lawsuit for a violation of their rights guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and under Article I, Section 8 of the Iowa Constitution.

Under a little known but increasingly scrutinized legal device called civil forfeiture, the drug interdiction units of the Iowa State Patrol, under the tutelage and training of Desert Snow and its owner and founder Joe David, have been confiscating cash and property from mainly out-of-state motorists under the fiction that the cash and property itself is "guilty" of a crime. Even if the owner of the property has no connection to criminal activity, the State of Iowa sues the property and its owner in civil actions (In Rem actions) and requires property owners to come into open court and open their financial records to prove their innocence. Notwithstanding the obvious direct conflict of interest, if the property owner fails to fight the civil action—often for an inability to hire legal counsel—the State of Iowa retains the cash and property and can use such cash to pay Desert Snow and Joe David for more training for its officers on how to confiscate even more cash. This creates a perverse incentive for Desert Snow and Joe David to teach the Iowa Drug Interdiction officers how to confiscate as much cash as possible regardless of the constitutional limitations placed on such seizures.

While state law authorizes civil forfeitures, the Iowa State Drug Interdiction team, with the active help of Desert Snow and Joe David, has turned this tool (meant to fight large scale drug cartels) into a veritable machine, devouring cash and property from thousands of out-of-state motorists, many of whom are innocent and "guilty" of nothing more than carrying their hard earned cash in their vehicle, and converting that cash and property into a huge revenue stream to help overcome budgetary shortfalls. Defendants seized much of this cash and property, as is the case with Newmerzhycky and Davis, without concern for the constitutional constraints placed on them by the Fourth and Fourteenth Amendments.

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this Verified Complaint under the Fourth and Fourteenth Amendments to the United States Constitution and 28 U.S.C. § 1331 (federal question) and § 1343 (civil rights).

2. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1402(b) because the acts at issue in this lawsuit occurred within the District.

PARTIES

3. Plaintiff William Barton Davis, ("Davis"), is a citizen of the United States and is a resident of Eureka, California.

4. Plaintiff John Newmerzhycky, ("Newmerzhycky"), is a citizen of the United States and is a resident of McKinleyville, California.

5. Defendant Justin Simmons, ("Simmons"), was at all times relevant to this Verified Complaint an Iowa State Trooper employed by the State of Iowa. Defendant Simmons is a member of the Eastern Iowa Drug Interdiction Team. In his capacity as a State Trooper, Defendant Simmons had a legal obligation to act in conformity with the United States and Iowa Constitutions and other applicable federal and state laws. Defendant Simmons is sued in his individual capacity and at all times relevant to this Verified Complaint was acting within this scope and course of his employment with the State of Iowa.

6. Defendant Eric Vanderwiel, ("Vanderwiel"), was at all times relevant to this Verified Complaint an Iowa State Trooper employed by the State of Iowa. Defendant Vanderwiel is a member of the Eastern Iowa Drug Interdiction Team and, in addition, has duties as a K-9 handler. In his capacity as a State Trooper, Defendant Vanderwiel had a legal obligation to act in conformity with the United States and Iowa Constitutions and other applicable federal and state laws. Defendant Vanderwiel is sued in his individual capacity and at all times relevant to this Verified Complaint was acting within this scope and course of his employment with the State of Iowa.

7. Defendant Jessie Whitmer, ("Whitmer"), was at all times relevant to this Verified Complaint a Special Agent with the Department of Public Safety in Johnson County. In his capacity as a Special Agent, Defendant Whitmer had a legal obligation to act in conformity with the United States and Iowa Constitutions and other applicable federal and state laws. Defendant Whitmer is sued in his individual capacity and at all times relevant to this Verified Complaint was acting within this scope and course of his employment with the State of Iowa.

8. Defendant Desert Snow LLC, ("Desert Snow"), is a private, for-profit "Criminal and Terrorist Identification and Apprehension" company, providing training for law enforcement

agencies in highway interdiction. Desert Snow is owned and operated by Joe David and is located at 2030 E Seward Rd, Guthrie, OK 73044.

9. Defendant Joe David is the owner and founder of Desert Snow, LLC, a private, for profit corporation located at 2030 E Seward Rd, Guthrie, OK 73044.

FACTUAL ALLEGATIONS

10. On April 15, 2013, William Barton Davis and his friend and driver, John Newmerzhycky were driving westbound on Interstate 80 through Poweshiek County, IA.

11. Davis and Newmerzhycky were traveling though Iowa from Illinois where they had participated in a World Series of Poker event at Harrah's Casino in Joliet, Illinois outside of Chicago.

12. Davis is a professional poker player while Newmerzhycky owned a successful glass-blowing business and occasionally played at professional poker events.

13. Davis and Newmerzhycky were driving a red Nissan Altima rental car bearing Nevada license plate #600 YSD.

14. At approximately 9:01 A.M. while signaling to pass a black SUV and a semi-tractor trailer, Davis and Newmerzhycky began to be followed by Trooper Simmons of the Iowa State Patrol Eastern Drug Interdiction Unit.

15. After following Davis and Newmerzhycky for about 15 miles, at mile marker 198 of I-80 westbound, Trooper Simmons executed a vehicle stop of Davis and Newmerzhycky.

16. Although he claimed to have pulled Davis and Newmerzhycky for failing to signal when changing lanes to pass the black SUV, video of the incident from Trooper Simmons patrol car clearly shows Newmerzhycky signaling before making the pass in the left-hand lane.

17. Trooper Simmons has admitted that he did not observe Davis and Newmerzhycky's vehicle speeding or committing any other traffic violations and that he observed nothing in the driving of Newmerzhycky that indicated that Newmerzhycky was driving impaired or unable to drive because of disability or illness.

18. Trooper Simmons also observed prior to pulling them over that both Davis and Newmerzhycky were wearing their seatbelts.

19. Trooper Simmons had no probable cause or reasonable suspicion to pull over Newmerzhycky and Davis' vehicle.

20. In fact, Trooper Simmons has a history of pulling over vehicles driving this section of I-80 simply because these vehicles are bearing out-of-state plates and not because of any articulable probable cause or reasonable suspicion. Between late 2008 and the time of the stop of Newmerzhycky and Davis' vehicle over 92% of Trooper Simmons warnings and citations were issued to out-of-state vehicles.

21. As stated, Trooper Simmons is a member of the Iowa State Patrol Eastern Iowa Drug Interdiction Unit. This unit receives training directly from Defendant Desert Snow.

22. Trooper Simmons received Desert Snow Phase I, II and III training from Defendant Joe David who traveled from Oklahoma to Des Moines to personally conduct the training sessions.

23. Defendant David is a former California Highway Patrolman who founded Desert Snow, LLC in 1989 to conduct "the first training program to offer its students a hands-on experience to include vehicle searching.

24. Defendant Desert Snow's motto is "Relentless Pursuit."

25. Defendant Desert Snow, LLC and Defendant David train drug interdiction officers to conduct high volumes of traffic stops on out-of-state vehicles, to engage in lengthy conversations

called "motorist interviews" with drivers and passengers looking for inconsistencies and indicators of criminal activity and to isolate and exert psychological pressure on the suspect without Miranda warnings in a "relentless pursuit" to have them make incriminating statements before a lawyer is involved.

26. A "motorist interview" is an interview conducted by officers in which the officers question motorists in an attempt to elicit information in the form of answers or behaviors that would lead the officers to believe that the motorist was involved in some sort of criminal activity.

27. A motorist interview is not confined to the purported reason for the initial stop.

28. Defendant Desert Snow's marketing specialist, Illinois Sheriff Deputy Ron Hain, has called interdiction units and their seizing of motorist's cash "a tax-liberating gold mine" that is "turning our police forces into present-day Robin Hoods."[1]

29. Trooper Simmons approached the red rental vehicle and asked for and was readily given a copy of Newmerzhycky and Davis' driver's licenses and was additionally given a copy of the rental agreement.

30. Trooper Simmons ordered Newmerzhycky to accompany him back to his patrol car so Simmons could issue Newmerzhycky a warning for the alleged failure to signal when passing.

31. Once Newmerzycky was secured in the Trooper's patrol car, Simmons began to engage Newmerzhycky in a "motorist interview."

32. While he was engaging Newmerzhycky in the interview about his travel plans, itinerary, employment and criminal history, Trooper Simmons ran a vehicle check and a criminal history check on both Newmerzhycky and Davis.

[1] See a recent Washington Post investigative report: Stop and Seize: Cops and the Money They Confiscate. http://www.washingtonpost.com/sf/investigative/2014/09/06/stop-and-seize/.

33. Newmerzhycky informed Simmons of Newmerzhycky and Davis' trip east to play in poker tournaments, including the one outside of Chicago that they had just departed from.

34. A video of the "motorist interview" was captured on Trooper Simmons' patrol car camera and shows that Newmerzhycky readily and without nervousness or anxiety answered Simmons intrusive questions.

35. But Defendant Desert Snow and Joe David's training taught Trooper Simmons that completely innocent behaviors were indicators of criminal activity, including:

- Dark window tinting
- Air fresheners or their smell
- Trash littering a vehicle
- An inconsistent or unlikely travel story
- A vehicle on a long trip that is clean or lacks baggage
- A profusion of energy drinks
- A driver who is too talkative, or too quiet
- Signs of nervousness, such as sweating, swallowing or redness of face
- Designer apparel or other clothing that seems inappropriate
- Multiple cellphones

36. Such behaviors do not give officers, including Trooper Simmons, reasonable suspicion or probable cause to believe that criminal activity is afoot or to search Newmerzhycky and Davis' vehicle.

37. Leaving Newmerzhycky in his patrol car, Trooper Simmons approached the passenger side of the stopped vehicle and began to speak with Davis who had been sleeping in the passenger seat at the time of the stop.

38. Because Davis had not been driving the vehicle at the time of the stop, Trooper Simmons sole reason for question Davis had nothing to do with the "alleged" reason for the vehicle stop but was instead designed to detain Newmerzhycky and Davis and to keep them from leaving the scene until a drug-sniffing dog could arrive on site. Simmons was also trying to illicit

information from Davis that was inconsistent with the information he received from Newmerzhycky.

39. Trooper Simmons returned to his patrol car and Newmerzhycky and completed the warning for allegedly failing to signal when passing. Simmons then informed Newmerzhycky that he was free to go at which time Newmerzhycky exited the patrol vehicle and began to return to the passenger-side of the rental car.

40. Instead of allowing them to continue their trip home, Trooper Simmons exited his patrol car again and informed Newmerzhycky that he needed to ask him a few more questions before they would be allowed to leave.

41. Simmons asked Newmerzhycky about the presence of controlled substances, cash or any other contraband that might be hidden in the vehicle. Newmerzhycky denied having any of those items in his vehicle.

42. Trooper Simmons then informed Newmerzhycky that he would like to search their vehicle and that request was denied.

43. Trooper Simmons had no legal justification or even legitimate reason for asking Newmerzhycky about their money or other valuable property. Trooper Simmons' sole purpose in do so was to improperly and unconstitutionally seize any such money and convert it to his or the State of Iowa's use.

44. Trooper Simmons then asked them if they would wait for a drug-dog to conduct a sniff search and that they wouldn't have to wait long since the drug-dog was "just over the hill" anyway. Trooper Simmons knew that Trooper Vanderwiel and his canine were "just over the hill" because the state GPS system on his computer told him of the location of every patrol officer in the field.

45. Again, Newmerzhycky denied consent for a search of their vehicle and indicated to Trooper Simmons that they had been waiting long enough and that they would like to be on their way.

46. Despite being denied consent, Trooper Simmons told Newmerzhycky and Davis that he was detaining them and having the dog conduct a sniff search of their vehicle because he believed that they were or had been involved in criminal activity although he could not specifically articulate what led him to believe this.

47. Within a minute of receiving the call from Trooper Simmons that consent had been denied to search and sniff the vehicle, Trooper Vanderwiel arrived on scene with his K-9, Laika, a three and a half year old Malinois.

48. As part of Defendant Desert Snow's training, Defendant David taught Troopers Simmons and Vanderwiel how detain Newmerzhycky and Davis without arresting them and how to unconstitutionally extend the stop beyond the initial purported reason for issuing them a warning.

49. Defendant David specifically trained Troopers Simmons and Vanderwiel how to end the initial encounter, tell Newmerzhycky he was free to leave and then follow Newmerzhycky back to his car to continue to encounter past the original purported purpose of issuing a warning ticket.

50. In fact, Desert Snow training materials specifically urged Troopers Simmons and Vanderwiel to chat with Newmerzhycky after the warning ticket was issued in an attempt to look for other indicators of criminal activity and as a way of mitigating later questions in court about whether they were engaged in an unreasonably long traffic stop.

51. As outlined above, the indicators that Desert Snow trained Troopers Simmons and Vanderwiel to look for (nervousness, lack of nervousness, overly clean cars, overly dirty cars or

the presence of air fresheners or energy drinks) are not indicators that provide probable cause for Troopers Simmons and Vanderwiel to search the car when consent was denied.

52. Just prior to arriving and pulling onto the shoulder, Trooper Vanderwiel intentionally shut off his dash camera in violation of Iowa State Patrol Policy 45-03.02 in which troopers must activate their Mobile-Video Recording Equipment or every traffic stop, or citizen contact," and "shall not discontinue recording until the traffic stop/incident is completed."

53. At the scene, Trooper Vanderwiel spoke to Davis and informed him that he would be deploying Laika despite the lack of consent from Davis and Newmerzhycky and despite the fact that Troopers Simmons and Vanderwiel had neither probable cause nor reasonable suspicion for the search.

54. Trooper Vanderwiel deployed Laika and indicated to Newmerzhycky and Davis that Laika "hit" on the back left corner of the trunk of the car.

55. Since Trooper Vanderwiel intentionally shut of his dash camera when he arrived, only Trooper Simmons dash camera captured the dog deployment and interestingly the one spot on Newmerzhycky and Davis' vehicle the camera was not focused was the area of the alleged "hit" by Laika.

56. Based on the alleged "hit" by Laika, Troopers Simmons and Vanderwiel conducted a search of the vehicle against the consent of Newmerzycky and Davis and in the truck of the car located a leather bag belonging to Davis, and after obtaining the combination from Davis, they discovered the bag contained $85, 020 in U.S. currency and an Apple iPad2.

57. When questioned about the money, Davis told the Troopers that the currency was his "bankroll" used to fund his participation in World Series of Poker events. In fact, Davis

encouraged Simmons and Vanderwiel to look him up on the internet where they could verify that he had placed third in Event #3 at the World Series of Poker in 2010.

58. In fact, several poker magazines were lying openly in the back seat of the vehicle which would have served to support Davis' explanation of the currency had Trooper Simmons actually cared to learn the truth of the situation instead of jumping to a conclusion.

59. Troopers Simmons and Vanderwiel took pictures of the trunk, bag and currency and informed Newmerzycky and Davis that they were taking them and the car to the Department of Transportation ("DOT") to conduct a further search of the vehicle.

60. At approximately 9:51 AM, Deputy Muschmann, a trooper that arrived with Vanderwiel, drove the Newmerzycky and Davis rental car to the Malcom DOT shop while Trooper Simmons followed with Newmerzhycky and Davis in the back seat of his rental car.

61. At the Malcom DOT shop, Newmerzhycky and Davis were separated.

62. Newmerzhycky was told he would have to remain in the patrol car while Davis was told to exit the patrol car and was placed in a chair about six feet from Simmons patrol car in the middle of the main garage of the shop.

63. While Newmerzhycky and Davis sat nearby, Trooper Simmons searched their rental car without a warrant and without probable cause.

64. Trooper Simmons took photographs of the inside of the vehicle and its contents while he was conducting this search.

65. In the backseat of the car, Simmons found and searched a computer bag containing approximately $15,000 in U.S. currency, two cellular telephones and a grinder with residual bits of marijuana.

66. Simmons questioned Newmerzhycky about the bag and items and while Newmerzhycky admitted he was using the bag and the currency and electronic items were his, Newmerzhycky indicated that the bag was actually a friend's bag.

67. Trooper Simmons and Special Agent Jessie Whitmer of the Division of Narcotics Enforcement began to aggressively question Newmerzycky and Davis about the currency, electronics and whether they were involved in criminal drug activity.

68. Both Newmerzhycky and Davis denied any involvement in criminal activity and repeatedly asked if they were free to leave.

69. Both were told they were not free to leave at this point.

70. At one point, Newmerzhycky informed Trooper Simmons that he needed to use the restroom. Newmerzhycky was suffering from diverticulitis and often needed to use the restroom frequently.[2]

71. Although Trooper Simmons reluctantly allowed Newmerzhycky to use the restroom located upstairs from the garage, Simmons followed Newmerzhycky into the bathroom and rather than remaining silent, Simmons continued to interrogate Newmerzhycky while he sat in the stall. Simmons laughed and commented on the sounds Newmerzhycky made in the stall and despite the fact that Newmerzhycky asked him to leave him alone and he would be done in a minute, Simmons continued to berate and laugh at Newmerzhycky.

72. When Newmerzhycky was finished and allowed to return to his sit in Trooper Simmons car, Trooper Simmons told him to sit tight and that he would be receiving a citation for the grinder in the computer bag.

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[2] Diverticulitis is painful abdominal condition in which pouches form in the wall of the colon that get inflamed and infected and lead to nausea and diarrhea.

73. Special Agent Whitmer attempted to interrogate Davis during the time that Simmons interrogated Newmerzhycky.

74. Davis told SA Whitmer that he had nothing further to add but SA Whitmer continued to insist that Davis had that amount of currency in his car because Davis was involved in drug trafficking. Davis continued to deny these assertions.

75. The only information he related to SA Whitmer was to reiterate that he had told Trooper Simmons earlier that both he and Newmerzhycky had been participating in poker tournaments, the money was the bankroll money associated with these tournaments and that the pair were on their way back to Las Vegas when stopped by Trooper Simmons.

76. In all, Newmerzhycky and Davis remained at the DOT facility for over two hours while their rental car and belongings were searched and while they were being questioned about their possible involvement in criminal drug activity.

77. After finally asking once again if they were free to go after over three hours of detainment or whether they were under arrest, Trooper Simmons told them to continue to sit still while he went upstairs.

78. Trooper Simmons returned a short while later with a written citation for Newmerzhycky. At this point Davis and Newmerzhycky were finally told they were free to go.

79. Trooper Simmons and SA Whitmer, however, told them that they were keeping the over $100,000 in US currency, an Apple iPhone and Samsung Galaxy cell phone belonging to Newmerzhycky, and an Apple iPad2 belonging to Davis.

80. Newmerzhycky and Davis got in their rental vehicle and resumed their journey back to Las Vegas.

81. Davis did not even receive a citation.

82. Shortly after citing Newmerzhycky and telling them they were free to go, SA Whitmer called the Humbolt County Narcotics Task Force in Humbolt, California and spoke with officers and gave them information he learned from his and Trooper Simmons unconstitutional search of Newmerzhycky and Davis and their rental car.

83. As a result, officers with the Humbolt County Narcotics Task Force applied for and received search warrants with the poisonous information received from the Iowa search and on the morning of April 16, 2013, officers searched the homes of both Newmerzhycky and Davis.

84. While driving back to California, Newmerzhycky received word that his home was being searched on the afternoon of April 16th by a roommate who was present and witnessed the search. Although no one was present at Davis' house, it was similarly searched that afternoon, with multiple officers being visibly present at both location.

85. Immediately after arriving back in California in mid-April, Davis and Newmerzhycky began contacting lawyers in Iowa seeking to have their seized cash returned to them.

86. As a result of the information passed to California from Iowa, Humbolt County authorities seized and froze Davis' bank accounts and as of the filing of this complaint, those bank account are still frozen.

87. Newmerzhycky and Davis hired attorney Matthew T. Lindholm to represent them in Iowa and on April 29, 2013, and attorney Lindholm filed a motion in Poweshiek County seeking the immediate return of the seized cash since efforts to reach an agreement for the return of the cash from the Poweshiek County Attorney had failed.

88. On May 24, 2013, the Poweshiek County Attorney's Office filed in In Rem Forfeiture Complaint seeking forfeiture of the $100,020 in US currency taken from Newmerzhycky and Davis. Despite have no evidence to support its assertions, the Poweshiek County Attorney's

Office sought the forfeiture because it said that Trooper Simmons and his colleagues has documented ongoing drug trafficking by the pair.

89. Also in May 2013, citing the highly disruptive, destructive and public search of Davis' home, Davis' landlord ended Davis' tenancy and forced him to move.

90. After various continuances and Motions and after discovery depositions were conducted on multiple individuals regarding the forfeiture, a settlement was reached on September 3, 2013 in which $90,000 of the $100,020 seized cash was returned to Newmerzhycky and Davis along with all the other physical property seized on April 15, 2013.

91. Newmerzhycky and Davis did not "make any admissions, waivers of defense or future claims" by signing the September 3, 2013 Settlement Agreement.

92. As is typical, one-third of the returned cash was the required payment to Attorney Lindholm for his services.

93. As a result of the expense and time required to fight the criminal charges and seek return of his forfeited cash, Newmerzhycky lost his home-based glass-blowing business. In addition, in order to maintain his residence and credit, Newmerzhycky was forced to live in his car and rent his home to someone so Newmerzhycky could continue paying the mortgage.

94. For Davis, a professional poker player, the forfeiture of $85,000 meant that he was unable to participate as many poker tournaments between mid-April and mid-September of 2013 and as a result, he suffered a significant loss of income in 2013.

95. After their seized items were returned in Iowa and despite the fact that the search had occurred over six months ago, officials in California brought criminal charges against both Newmerzhycky and Davis for allegedly growing illegal marijuana even though both possessed

the necessary permits allowing them to grow marijuana in California in the amounts they did for medical purposes.

96. Newmerzhycky and Davis were forced to hire a California lawyer at their personal expense to fight the charges related to the unconstitutional search of their residences caused by Simmons, Vanderwiel and Whitmer.

97. On October 16, 2013, immediately after receiving the paperwork from Humboldt County informing him of the criminal charges against him, Newmerzhycky suffered a sub-arachnoid hemorrhage (stroke).

98. Newmerzhycky had to be airlifted to University of California San Francisco Medical Center where he underwent emergency surgery, followed by additional surgeries. He remained in the hospital for an extended period of time and was unable to make any efforts to restart his glass blowing business.

99. Finally, in April of 2014, after six months and Motions to Dismiss from Davis and Newmerzhycky, criminal charges in California were withdrawn against the pair when their lawyers, Manny Daskal and Benjamin Okin showed the District Attorney the dash-cam video of Trooper Simmon's stop on I-80 and the District Attorney put on the record she believed the stop in Iowa was unconstitutional and therefore the searches in California were fruit of the poisonous tree.

CAUSES OF ACTION
Count I
Fourth Amendment (42 U.S.C. § 1983)
(Unreasonable Search & Seizure)
Plaintiff v. Defendants Simmons, Vanderwiel, Whitmer, Desert Snow and Joe David

100. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

101. Defendants Simmons, Vanderwiel and Whitmer lacked probable cause or even reasonable suspicion that a traffic violation occurred and therefore to stop and search Plaintiffs and their vehicle and lacked probable cause or reasonable suspicion to detain Plaintiffs for even the initial roadside questioning, let alone detaining them for a dog-sniff of the vehicle or to take, detain them and question them at the DOT facility.

102. Upon information and belief, Defendants Simmons, Vanderwiel, Whitmer, Desert Snow and Joe David entered into a combination, agreement or understanding to violate Plaintiff's constitutional rights under the Fourth and Fourteenth Amendment by carrying out illegal traffic stops on out-of-state vehicles without probable cause or reasonable suspicion that a crime or even minor traffic violation occurred all in an effort to seize large amounts of cash which results in monetary profits for the Iowa Drug Interdiction Unit, Desert Snow and Joe David and results in accolades and promotions for individuals officers such as Defendants Simmons, Vanderwiel and Whitmer. Such a combination, agreement or understanding led to the illegal stop of Newmerzhycky and Davis, the seizure or their cash and other property and all the damages that naturally flow from such actions.

103. Defendants Simmons, Vanderwiel, Whitmer, Desert Snow and Joe David each acted in furtherance of said agreement, combination or understanding by cooperating in the unconstitutional training and carrying out the unconstitutional stop for profit or personal glory and gain.

104. The aforementioned conspiracy violates 42 U.S.C. § 1983.

105. Defendants' actions violated Plaintiffs' clearly established constitutional rights.

106. Defendants acted intentionally to deprive Plaintiffs of their constitutional rights under the Fourth and Fourteenth Amendment, or in wanton, reckless disregard of those rights.

107. As a direct and proximate result of Defendants' policies and practices of seizing cash and property and calling law enforcement officials in other jurisdictions with information obtained from an unconstitutional search, plaintiffs suffered irreparable injury to their constitutional rights, including but not being limited to being evicted from homes, losing businesses and income, suffering physical ailments and being forced to hire lawyers to fight unfounded criminal charges.

108. Plaintiffs seek compensatory and punitive damages against Defendants Simmons, Vanderwiel, Whitmer, Desert Snow and Joe David for violation of their rights to be free from unlawful seizure.

Count II
Article I, Section 8 of the Iowa Constitution
(Unreasonable Search & Seizure)
Plaintiff v. Defendants Simmons, Vanderwiel, Whitmer, Desert Snow and Joe David

109. Plaintiffs incorporate by reference the allegations in the paragraphs above as though fully set forth here.

110. Defendants Simmons, Vanderwiel and Whitmer lacked probable cause or even reasonable suspicion that a traffic violation occurred and therefore to stop and search Plaintiffs and their vehicle and lacked probable cause or reasonable suspicion to detain Plaintiffs for even the initial roadside questioning, let alone detaining them for a dog-sniff of the vehicle or to take, detain them and question them at the DOT facility.

111. Upon information and belief, Defendants Simmons, Vanderwiel, Whitmer, Desert Snow and Joe David entered into a combination, agreement or understanding to violate Plaintiff's constitutional rights under Article I, Section 8 of the Iowa Constitution by carrying out illegal traffic stops on out-of-state vehicles without probable cause or reasonable suspicion that a crime or even minor traffic violation occurred all in an effort to seize large amounts of cash

which results in profits for both the Iowa Drug Interdiction Unit and Desert Snow and Joe David and results in accolades and promotions for individuals officers such as Defendants Simmons, Vanderwiel and Whitmer. Such a combination, agreement or understanding led to the illegal stop of Newmerzhycky and Davis, the seizure or their cash and other property and all the damages that naturally flow from such actions.

112. Defendants Simmons, Vanderwiel, Whitmer, Desert Snow and Joe David each acted in furtherance of said agreement, combination or understanding by cooperating in the unconstitutional training and carrying out the unconstitutional stop for profit or personal glory and gain.

113. Defendants acted intentionally to deprive Plaintiffs of their constitutional rights under Article I, Section 8 of the Iowa Constitution, or in wanton, reckless disregard of those rights.

114. As a direct and proximate result of Defendants' policies and practices of seizing cash and property and calling law enforcement officials in other jurisdictions with information obtained from an unconstitutional search, plaintiffs suffered irreparable injury to their constitutional rights, including but not being limited to being evicted from homes, losing businesses and income, suffering physical ailments and being forced to hire lawyers to fight unfounded criminal charges.

115. Plaintiffs seek compensatory and punitive damages against Defendants Simmons, Vanderwiel, Whitmer, Desert Snow and Joe David for violation of their rights to be free from unlawful seizure under the Article I, Section 8 of the Iowa Constitution.

116. Plaintiffs seek compensatory and punitive damages against Defendants Simmons, Vanderwiel, Whitmer, Desert Snow and Joe David for violation of their rights to be free from unlawful seizure under Article I, Section 8 of the Iowa Constitution.

WHEREFORE, Plaintiffs respectfully request:

a. Compensatory damages against Defendants Simmons, Vanderwiel, Whitmer Desert Snow and Joe David;
b. Punitive damages against Defendants Simmons, Vanderwiel, Whitmer, Desert Snow and Joe David;
c. Reasonable attorney's fees and costs; and
d. Such other and further relief as may appear just and appropriate.

Plaintiffs hereby demand a jury trial as to all claims stated in this Complaint.

Monday, September 29, 2014

Respectfully submitted,

s/Glen S. Downey

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